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THE SHAH COMMISSION FINAL REPORT

General Observations

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A Commission of Enquiry headed by Shri Justice J. C. Shah, Retired Chief Justice of the Supreme Court of India, was appointed by the Central Government in 1977 in the wake of widespread public demand for an enquiry into excesses, malpractices and misdeeds during the Emergency or in the days immediately preceding it.

The Government of India have already accepted the findings, observations and recommendations contained in the two interim reports and the Third and Final Report of the Commission.

The Final Report was laid on the table of the two Houses of Parliament on August 31, 1978.

The chapter on "General Observations" of the Shah Commission's Interim Report No. 2 was reproduced earlier as a pamphlet. A pamphlet containing the entire Chapter 5 of the first Interim Report on the "Circumstances Leading to Declaration of Emergency" was also brought out. In view of the continuing public interest in the subject, we reproduce here Chapter XXIV of the Third & Final Report devoted to "General Observations".

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The Commission has dealt with the different heads of the terms of reference relating to the Central and State Governments in separate Chapters. The observations of the Commission are intended to present a comprehensive picture of the manner in which the various State Governments and their employees at different levels functioned during the period of the emergency. Arbitrariness and reckless disregard of the rights of others and the consequent misery, which characterised a number of actions of the different public servants over a period of nearly 19 months, terrorised the citizens resulting in a complete loss of faith of the people in the fairness and objectivity of the Administration generally.

Misuse of Authority

Among the abuses and misuse of authority by the administration, the one single item which had affected the people most over the entire country, was the manner in which the powers assumed by the Government to detain persons under the amended MISA were misused by the officials at various levels.

A large number of officers—District Magistrates and Commissioners of Police, who exercised the powers of District Magistrates ex-officio, obediently carried out the instructions emanating from politicians and administrative heads issued on personal or political considerations. Many of these officers who appeared before the Commission explained that in the circumstances that prevailed they had no alternative. In the light of the evidence concerning the conditions prevailing during the period of emergency, the Commission has generally accepted the plea of helplessness tempered by expre-

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ssions of regret put forward by the detaining officers. This, however, does not minimise the basic fact that such conduct on the part of responsible officers is not in consonance with the best traditions of the services to which they belonged, and of the ethical considerations which must govern the exercise of powers involving deprivation of liberty, under an order based entirely on subjective satisfaction of the officers concerned without a trial and without affording an opportunity to the person detained or even his knowing what infraction he had, in the view of the official, been responsible for.

The Commission has also come across officers who having committed excesses at the behest of others—politicians or higher administrative authorities—have sought to defend patently indefensible conduct by suggesting that they had acted in good faith and in due compliance with the provisions of the MISA. Some of these officers did apparently a series of wrong things, being powerless to resist the pressures in the prevailing conditions and being afraid then of the consequences, if they were not to do what the politicians or higher authorities expected or ordered them to do. They have now sought to justify their wrong conduct again presumably because of the fear of consequences. These officers who could not do the right thing during the emergency by resisting illegal pressures, did not do the right thing even after the withdrawal of the emergency. Not only that they made no attempt to atone for their past infirmity, they have in fact made vain attempts to justify their conduct. They could not display courage to face the truth then; they have not the character to face the truth now and to own up their past wrongs.

Periodic Review of Powers

Though at the time of writing the Report the Parliament has already taken steps to repeal the MISA, the manner in which the MISA detentions were ordered by the detaining authorities at different levels during the emergency, should

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be a lesson to the people's representatives in the Legislature as to how a Statute, initially well conceived, may be misused for purposes totally alien to its objects and the intentions of its framers. It is time that some mechanism is devised to ensure that enactments, which confer on public servants powers exercisable on their subjective satisfaction and which interfere with the normal lives and activities of the citizens, are subjected to a periodical review by the farmers themselves so that the spirit and motivation behind all such legislation are fully and completely honoured by those invested with power or authority under the Act. An enactment once it comes into the statute book should not be allowed to be forgotten. Its operation should be kept constantly under review. There should be built-in provisions to remind the framers and the public servants exercising authority under the statute, for periodical reviews by the legislatures so that the initial aims and objects of the Act are not perverted.

In several cases heard by the Commission, responsible officials admitted to the fact of large-scale fabrication of records concerning various individuals and matters to subserve the interests of a few. Considering the manner in which the MISA cases were dealt with by the detaining authorities which often involved large-scale fabrication of records, it is but proper that an effort should be made by the authorities at the Centre and in the States to devise means to ensure that these concocted records are not used again to the disadvantage or detriment of the individuals concerned. This has necessarily to be done; otherwise the very same records would over a period of time come to be invested with a degree of sanctity and authenticity which they often lack, and these very records may in future be ferreted out of the archives to support or to demolish an individual or a cause.

Conduct of Officers

The Commission has referred to the conduct of the officers concerned with the administration, both at the Secre-

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tariat and in the field, in Chapter XV, para 20 of the Second Interim Report. In that context the Commission has observed that "imaginary fear of possible and probable consequences for doing the right things have done more havoc than the known consequences that actually may have followed the performance of duties on the right lines by the Government servants." The public servants have not infrequently unduly exaggerated the fear under which they were functioning during the emergency with a view to avoid the likely consequences of a decision which may have been contrary to the express or implied wishes of the political and administrative policy makers. In a number of cases, officials were almost anticipating the wishes of those in authority, however illegal, immoral and incongruous with the basic tenets of administration, such conduct on their part may have been. They have set out the excuse of undesirable consequences that were likely to follow, should they have dared to withstand the pressures from their superiors. In the process many of them have also stood to gain, may be even notionally, by being allowed to continue in offices which were to their liking and which may have yielded conveniences or comforts incidental to the office and undoubtedly welcome to the incumbent. It is a matter of concern to the Commission that the prevailing acts of impropriety and immorality were not considered improper or immoral by the authorities. It came to be accepted, as a concept of a new propriety, and a new morality.

It must however be conceded, as it is clear on the evidence, that there was an all-prevading fear of consequences among the officials, which in many cases was indeed genuine, which inhibited many officials from acting in the only way which would have been conducive to the health of the administration primarily and of the nation generally. Commendments of good conduct, good behaviour and morality got muted when self-preservation was at stake. Considering the conditions under which the officials had to function in the State of Haryana, and the exam-

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ples that have been brought on the record of the Commission by way of only a few of the many cases of wanton vindictiveness that were manifest in the actions of the Government of Haryana during the period of the emergency, it is necessary to point out the need to provide certain constitutional safeguards to look after the interests of the entire run of officials, and particularly those who are involved at the decision making levels in the various departments of the Government in the States and at the Centre. When unscrupulous and unprincipled politicians and their associates are in a position to harm the public servants refusing to fall in line with wrong and illegal orders, it becomes necessary in the interest of the basic unity and integrity of the country, as also of the fundamentals of the Constitution and the rule of law, to protect the officials who are called upon to function at different administrative levels.

The case of Shri Ishwar Lal Chaudhary, Employment Exchange Officer at Bhiwani (Haryana) who was ordered to be arrested on the spot and to be detained under MISA by Shri Bansi Lal when he had gone to Shri Bansi Lal's house to meet him on his arrival there, is a classic example which illustrates how an authoritarian Chief Minister's illegal and indefensible orders for detaining an innocent individual were carried out mechanically at the level of the District Magistrate without even the slightest pretence of satisfaction of the grounds for detention. It is true that it may have required more than a hero's courage for any District Magistrate to withstand the pressure from Shri Bansi Lal in the circumstances then prevailing. But it must leave an indelible blemish on the administration as a whole. The only fault of Shri Chaudhary was that he was registering for employment applicants who belonged to the districts neighbouring to Bhiwani in Haryana. Detention of an officer, who had a reputation for integrity, for not carrying out orders which were plainly unwarranted and which amounted to a flagrant and unpardonable misuse of authority by a politician, has a very important and telling lesson for

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the nation as a whole. This small functionary going about his job correctly, truthfully and fairly was made the victim of the wrath of a politician to whom apparently the only interest that mattered was his own and that of his son to the exclusion of the interests of the citizens of even a neighbouring district within his own State. If this instance is projected on the national scale, a political authority may decide to penalise an officer for tendering an advice or taking a decision the operational effect of which, albeit beneficial, transcends the territorial boundaries of the State to embrace the interests of the country as a whole. It needs hardly be emphasized that the public servants as a class, each in his own place and doing his own job, are expected to function in the interests of the country as a whole and not to subserve narrow, sectarian or regional interests of politicians.

The political system that our Constitution has given to our country is such that it contemplates parties with different political ideologies administering the affairs of the Centre and the State Governments. It is necessary in the interest of the territorial, political and economic integrity of the nation to ensure that the factors which contribute to such integrity are forever and continuously strengthened and not impaired. One such factor, and a very important and decisive one, is the body of public servants at various levels and particulary those at the decision making levels belonging to the different disciplines and functioning in the States and at the Centre. If the basic unity and territorial integrity of the country is to be emphasised at the political level it is imperative to ensure that the officials at the decision making levels are protected and immunised from threats or pressures so that they can function in a manner in which they are governed by one single consideration-the promotion of public well-being and the upholding of the fundamentals of the Constitution and the rule of law. The Government ought to ensure this, if necessary, by providing adequate and effective safeguards to which the officials may turn if and when necessary against any actual or attempted

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threats by the political and/or administrative authorities to sway the officials from performance of their legitimate duties.

In the light of the overwhelming and disturbing facts that have come on the record of the Commission, to refuse even to look at the administrative failures to the strains of which the Nation has been exposed and to pretend that everything has been right with the administrative apparatus save a few minor aberrations by a few wayward officials is, to evade the issue. It is hoped that the authorities both at the Centre and in the States, will look at some of the cases in which aberrations have been pinpointed by the Commission and many others on which the Commission has got investigations done through its officials and forwarded the reports to the respective Governments for further necessary action, in a spirit of honest enquiry to determine what went wrong not only in each individual case but generally and how a similar situation can and should be averted in the future. It is necessary to face the situation squarely that not all the excesses and improprieties committed during the emergency originated at the political level. In a large number of cases it appears that unscrupulous and over-ambitious officers were prepared to curry favour with the seats of power and position by doing what they thought the people in authority desired. The solutions to the various problems that would inevitably get thrown up must in its nature be complex, but the right solutions may be found if the exercise is undertaken at various levels with a steadfast desire and determination to reach them.

Exhortations have in the past often been addressed by political leaders that public functionaries must be committed servants of the Government. These have in no small measure been responsible for some of the serious consequences that had followed certain steps taken by the Government servants during the emergency. The commitment of a public functionary is, however, to the duties of his office, their due performance with an accent on their ethical content, and not to the ideologies, political or otherwise, of the politicians who

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administer the affairs of the State. Commitment by the public servants, therefore, means only and entirely, commitment to the policy and programmes of the Government insofar as the policy and programmes are in confirmity with the fundamentals of the Constitution. Anything beyond these fundamentals should be construed to mean as falling outside the scope and the purview of the commitment. The Nation has given to itself a democratic form of Government and the administrative set up must function in a manner fulfilling the demands of that form of Government in the context of our developing society. Public servants of the different departments have responsibilities, special and peculiar to their respective functions and charter of duties, and the orientation of these responsibilities must be to the programme of social and economic change set out by the Government, but within the constraints of the rule of law in a democratic society.

This orientation should on no account extend to the politics of the party and/or of the individuals in power. But during the period of the emergency the public servants were expected often to orient the performance of their duties not to the rule of law but the desires and dictates of the politicians and the administrative heads. In many cases the administration and administrators ceased to be insulated from politics with disastrous consequences. It may be observed that all the safeguards and lofty principles of administration would be of no avail if the officials concerned are impervious to value sensitivities of established and accepted administrative norms and practices. It is, therefore, imperative that the public servants should adhere strictly only to their commitment to the programme of the party in power which should be in consonance with the provisions of the laws and the Constitution without in any way compromising with the principle that public servants have to be politically neutral at all levels and at all times. Unless the Services work for and establish a reputation of political neutrality, the citizens will have no confidence in the impartiality and fairness of the Services. It is expected of the services that they would

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tender frank, informed and well-considered advice without getting personally involved in their present position or their future advancement, however, unpalatable such advice may be to the political head of the Ministry.

It would serve some useful purpose if the views of the Government on this point are set out unequivocally and in a manner which would enable the different Government functionaries to function without inhibition, maintaining at the same time the highest standards of administrative propriety. The Government's primary responsibility is to guarantee protection to those officials who refuse to deviate from this code of conduct which should be accepted not only by the officials but also by the political authorities. If there is sincerity at the political level about the need for and the desirability of a non-political and programme-oriented administrative machinery, the time is ripe for reaffirming these principles and ideals in a manner that there is no ambivalence about the intentions of the Government in relation to the Government servants. Any dichotomy in this regard in an invitation to the unscrupulous among the officials to ride the bandwagon in the hope of temporary personal benefits or concessions. If the administrative set up in the country in its largest and most comprehensive sense is to settle down to a spell of clean, efficient and purposeful functioning, the Government must encourage its establishment to function freely and fearlessly and yet within the framework of established disciplinary principles, making it clear that deviations from established procedures without justification would be dealt with severely. Such an understanding between the Government and the decision making levels alone would prevent the administrative set up from being exploited by unscrupulous careerists who lack the patience to wait for their legitimate claim in the services, and place in the scheme of things.

The Commission has viewed with concern the evidence relating to the enormous power that was wielded by the

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lower functionaries like Shri R.K. Dhawan, Shri R.C. Mehtani, Shri Navin Chawla and some others. It is necessary for the Government to appreciate the need for defining the various functions and powers of the several lower functionaries who are in close proximity to the seats of power. The Commission views the developments in this regard with great concern, for power came to be exercised by some of these lower functionaries without the requisite authority and the accountability that goes with it. Power and responsibility must generally go together. During the emergency, the political component of Government in quite a few important cases came to be divorced from the channel of communication. The result was that powers came to be wielded by the Special Assistants or the Private Secretaries in the name of and on behalf of the Ministers, and the people at the receiving end of the orders were left with no option but to carry out their orders without even having any facility or the desire to verify the authenticity and the authority of the orders emanating from the lower functionaries attached to the Ministers. This style of functioning at higher level of the Administration has indeed taken a toll of the liberty and careers of countless people. The Government should define as precisely as it is possible, the circumstances under which the personal staff including Special Assistants and the Private Secretaries attached to the Ministers could convey orders. The Government should also provide checks and safeguards to ensure that in the event of doubt or difference of opinion the levels receiving the orders from the Ministers are in a position to check back and satisfy themselves that the orders in fact had emanated from the source in whose name the orders were issued. Unless every level of the Government starting with the political component and going down the line is animated by one and the only desire to function within a democratic set up with the ultimate aim and object being only to be able to look after the interests of the common man, there is no hope that we in this country will be able to graduate ourselves from mere words to the real core of democracy.

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The trend in the democratic Governments today is in favour of more and more open functioning of the Government with less and less accent on secrecy. It has been established that more the effort at secrecy the greater the chances of abuse of authority by the functionaries. In this regard there has been some serious re-thinking in certain foreign countries on the Acts and related matters governing the official secrets. It is suggested that the Government may take into consideration the present trends in this regard in the democratic countries and avail of the benefit of their experiences for such action as may be feasible, practicable and desirable in the context of our own peculiar needs and conditions.

During the emergency, 25,962 public servants were compulsorily retired. The Commission had addressed letters to all the State Governments and the Ministries of the Government of India requesting them to undertake a review among other things of all the cases of compulsory retirement. As a result of this review, 14,187 public servants have been reinstated. The figures speak for themselves. If such a large number of employees could be reinstated following a review of their cases, it only means that in most, if not in all of these cases of premature retirement, the guidelines laid down for premature compulsory retirement had not been followed strictly and in accordance with the spirit of the rules. The conclusion also follows that if this review had not been undertaken either at the instance of the Commision or otherwise, the unfortunate public servants who suffered injustice for extraneous reasons would have continued to remain under a cloud and consequent ignominy. It is necessary to devise adequate and appropriate safeguards to ensure that powers available to the Government to prematurely retire an employee are not arbitrarily used without any scope for redressal of his grievances should the employee feel that he has been unjustly and prematurely retired. Any such safeguard provided should be capable of functioning in a manner that it is able to dispose of the review or appeal

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within a stipulated time. Adoption of *"droit administratif"* on the French model is one of the safeguards for looking after the interests of the employees of the Government which may be profitably considered.

Overhaul of Administration

Interpretation of the happenings during the emergency merely as an essay in certain unrelated transactions called excesses indulged in by an individual or a group of individuals, would be wholly a misintrepretation, if not a total travesty of facts. What happened during the emergency was the subversion of a system of Administration. The lament of Commander Dutta about the 'gutless administration' while referring to the Administration in Haryana is an understandable condemnation of the attitude of the Government servants contributing significantly to the subversion of the system. If a recurrence of this type of subversion is to be prevented, the system must be overhauled with a view to strengthen it in a manner that the functionaries working the system do so in an atmosphere free from the fear of the consequences of their lawful actions and in a spirit calculated to promote the integrity and welfare of the Nation and the rule of law. This will call for considerable heart-searching both at the political and the administrative levels. Both the groups during the period of the emergency, sadly deviated from their respective and legitimate roles of duty, trespassing into each other's areas with the consequences that are there for all to see and many to lament. If the officials on the one side and the politicians on the other do not limit their areas of operation to their accepted and acknowledged fields, this Nation cannot be kept safe for working a democratic system of Government. Unless this realisation dawns upon the Government and the people in all its serious implications specially for the future, the labours of the Commission would be in vain. The Commission has examined the various transactions, not with the primary object of finding fault with the actions therein, not for cataloguing the human frailities, but to extract a

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lesson for the future. The process of reformation and rejuvenation especially in the field of administration will have to be speeded up bringing it in tune with the ethos of our Nation which alone would prevent a recurrence of the type of maladministration and misuse of power and authority as had occurred during the emergency. Unless this awareness permeates all strata of our society, even with the best of intentions, possible recurrence of this type of tragedy may not be prevented.

The commission has had occasion to peruse the findings of the earlier Commissions appointed by the Government at the Centre and in the States to probe into the conduct of the Ministers of the State Governments-particularly the reports of Shri S. R. Das who inquired into the conduct of late Shri Pratap Singh Kairon, Chief Minister of Punjab (1963-64), Shri Rajgopal Iyengar who inquired in to the con duct of late Shri Bakshi Ghulam Mohammed, Ex-chief Minister of Jammu & Kashmir (1965-67), Shri Venkatrama Iyer who inquired into the conduct of certain Ministers of Bihar (1967-70), Shri Madholkar who looked into the affairs of the Ministry of Shri Mahamaya Prasad Sinha, Chief Minister of Bihar and other Ministers (1968-69), Shri A. N. Mulla who looked into the affairs of the Ministers of Kerala-S/Shri Govindan Nair and T. V. Thomas (1969-71)—and Shri G. K. Mitter who looked into the Kendu leaves purchases in Orissa (1973-74). The commission is not aware of the action taken, if any, in response to these Reports submitted from time to time in regard to the Minister-Civil Servant relationship. The fact, however, remains that the refrain in all these reports insofar as this concerns the relationship of the Ministers with the Civil Servants, is the same. One cannot but be struck by the near-unanimity in the observations of the Several Commissions on the unhealthy factors governing the relationship between the Ministers and the Civil Servants. Yet nothing seems to have been done, at any rate effectively, to set right such of the aspects of these relationships which, prior to the emergency, had contributed to the several develop-

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ments which came in for indictments by the Commissions. In the light of this, it may be easy to conclude that what happened during the emergency is merely a tragic culmination of the particular trend that had been identified and condemned from time to time by the Commissions of the past. The Commission owes it to the citizen of India to emphasise that appointments of Commissions by themselves are not enough if the Governments concerned do not follow up and implement at least such of the recommendations as are avowedly accepted by the Government. Unless the Government is prepared to apply the corrective principles in the Minister-Civil Servant relationship effectively and with a determination to produce the desired results at different levels and within the several components of the Government, the agonising impact of this unfortunate malaise would be felt by the common man in the streets, in the villages, in the factories and in the far distant corners of this vast country.

As borne out by the records of the Government and the depositions of several responsible Government servants, dishonesty and falsehood became almost a way of official life during the emergency. As Robert Frost said, "most of the change we think we see in life is due to truth being in or out of favour." If administrative machinery in our country is to be rendered safe for our children, the Services must give a better account of the themselves by standing up for the basic values of an honest and efficient administration. That alone can resurrect the people's lost faith once again in our Services. If a democratic heritage is to be left for future generations, we should want the truth again to be enshrined in its legitimate place in the social, economic and political scheme of things in our country. There is nothing unattainable or profound in this. It is a simple human message.

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